

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 10-1993 CW

JUST FILM, INC.; RAINBOW BUSINESS
SOLUTIONS, doing business as
PRECISION TUNE AUTO CARE; BURLINGAME
MOTORS, INC.; DIETZ TOWING, INC.; THE
ROSE DRESS, INC.; VOLKER VON
GLASENAPP; JERRY SU; VERENA
BAUMGARTNER; TERRY JORDAN; LEWIS BAE;
and ERIN CAMPBELL, on behalf of
themselves, the general public and
those similarly situated,

ORDER DENYING
WITHOUT PREJUDICE
DEFENDANT SKS
ASSOCIATES, LLC'S
MOTION TO STAY AND
MBF MERCHANT CAPITAL
AND WILLIAM HEALY'S
MOTION FOR SANCTIONS
(Docket Nos. 283 and
285)

Plaintiffs,

v.

MERCHANT SERVICES, INC.; NATIONAL
PAYMENT PROCESSING; UNIVERSAL
MERCHANT SERVICES, LLC; UNIVERSAL
CARD, INC.; JASON MOORE; NATHAN
JURCZYK; ROBERT PARISI; ERIC
MADURA; FIONA WALSHE; ALICYN ROY; MBF
LEASING, LLC; NORTHERN FUNDING, LLC;
NORTHERN LEASING SYSTEMS, INC.;
GOLDEN EAGLE LEASING, LLC; LEASE
SOURCE-LSI, LLC; LEASE FINANCE GROUP,
LLC; JAY COHEN; LEONARD MEZEI; SARA
KRIEGER; BRIAN FITZGERALD; SAM BUONO;
MBF MERCHANT CAPITAL, LLC; RBL
CAPITAL GROUP, LLC; WILLIAM HEALY;
JOSEPH I. SUSSMAN; JOSEPH I. SUSSMAN,
PC; and SKS ASSOCIATES, LLC,

Defendants.

AND ALL RELATED CROSS-CLAIMS

Defendant SKS Associates, LLC, moves to stay all proceedings
against it pending its appeal of the Court's order denying its
motion to compel arbitration. MBF Merchant Capital, LLC, and
William Healy move for sanctions against Plaintiffs. Plaintiffs
oppose the motions. The motions will be decided on the papers.

1 I. SKS's Motion to Stay Pending Appeal

2 Courts have discretion to stay an action pending appeal of an
3 order denying a motion to compel arbitration. Britton v. Co-op
4 Banking Group, 916 F.2d 1405, 1412 (9th Cir. 1990). "A party
5 seeking a stay must establish that he is likely to succeed on the
6 merits, that he is likely to suffer irreparable harm in the absence
7 of relief, that the balance of equities tip in his favor, and that
8 a stay is in the public interest." Humane Soc. of U.S. v.
9 Gutierrez, 558 F.3d 896, 896 (9th Cir. 2009); see also Perry v.
10 Schwarzenegger, 702 F. Supp. 2d 1132, 1135 (N.D. Cal. 2010). The
11 first two factors of this standard "are the most critical." Nken
12 v. Holder, 129 S. Ct. 1749, 1761 (2009). Once these factors are
13 satisfied, courts then assess "the harm to the opposing party" and
14 weigh the public interest. Id. at 1762.

15 For the reasons stated in its June 13, 2011 Order denying
16 SKS's motion to compel arbitration, the Court does not conclude
17 that SKS is likely to succeed on the merits of its appeal. Nor
18 does the Court find that SKS will face irreparable harm at this
19 time. SKS may renew its motion for a stay at a later date if it
20 can establish that discovery has become unduly burdensome.
21 Alternatively, SKS may renew its motion in advance of any class
22 certification proceedings. Any renewed motion to stay should be
23 accompanied by some evidence that the monies SKS seeks to collect
24 from Campbell are for taxes actually owed and paid during her lease
25 term, which elapsed approximately four years before SKS sought to
26 recover them.

27 This decision is not inconsistent with the Court's ruling in
28 McArdle v. AT&T Mobility LLC, 657 F. Supp. 2d 1140 (N.D. Cal.

1 2009). There, a stay was warranted because a decision on the
2 plaintiff's fully-briefed class certification motion depended on
3 matters being decided on appeal. This case is not yet at that
4 stage of litigation.

5 Accordingly, SKS's motion to stay is DENIED without prejudice.
6 (Docket No. 283.) SKS may renew its motion at a later date if it
7 can demonstrate that discovery has become unduly burdensome.
8 Alternatively, it may seek a stay as class certification
9 proceedings approach.

10 II. MBF Merchant Capital and Healy's Motion for Sanctions

11 Pursuant to Federal Rule of Civil Procedure 11, MBF Merchant
12 Capital and Healy seek sanctions against Plaintiffs and their
13 counsel. They contend that Plaintiffs' allegations against them
14 were false, that Plaintiffs' counsel failed to conduct an adequate
15 investigation and that Plaintiffs did not have any good faith basis
16 to bring claims against them.

17 When a defendant moves for Rule 11 sanctions based on a
18 plaintiff's complaint, "a district court must conduct a two-prong
19 inquiry to determine (1) whether the complaint is legally or
20 factually 'baseless' from an objective perspective, and (2) if the
21 attorney has conducted 'a reasonable and competent inquiry' before
22 signing and filing it." Holgate v. Baldwin, 425 F.3d 671, 676 (9th
23 Cir. 2005) (quoting Christian v. Mattel, Inc., 286 F.3d 1118, 1127
24 (9th Cir. 2002)). Here, the second prong of this test is not met.
25 As detailed further in the Court's orders on Defendants' motions to
26 dismiss, this case has involved various legal entities with similar
27 names and apparently common officers. Thus, it is understandable
28 that, given the limited facts they had about Defendants,

1 Plaintiffs' counsel endeavored to name all the appropriate entities
2 and individuals. The Court finds no evidence of improper purpose
3 on the part of Plaintiffs' counsel. Indeed, this case remains in
4 its early stages. Although Plaintiffs' claims against Healy and
5 MBF Merchant Capital have been dismissed, they may seek leave to
6 amend their complaint if discovery reveals evidence supporting
7 claims against these Defendants.

8 Under the complicated circumstances of this case, sanctions
9 are not justified. Accordingly, MBF Merchant Capital and Healy's
10 motion is DENIED. (Docket No. 285.)

11 IT IS SO ORDERED.

12
13 Dated: 8/30/2011



CLAUDIA WILKEN
United States District Judge